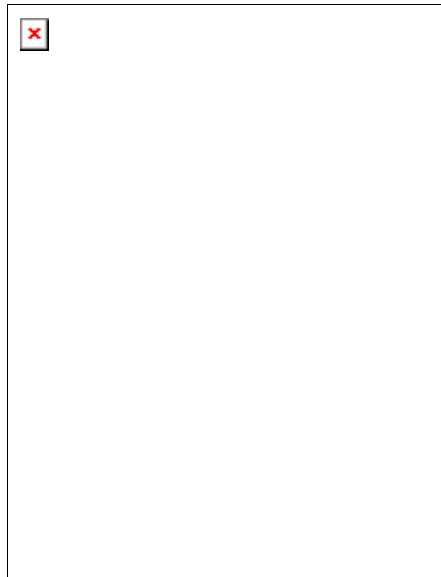


National Park Service  
U.S. Department of the Interior  
2006

# Management Policies

## **The Guide to Managing the National Park System**



August 31, 2006

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### **Management of National Park Service Programs**

This volume of *Management Policies* focuses exclusively on management of the national park system. Beyond managing the national park system, the National Park Service administers a broad range of programs that serve the conservation and recreation needs of the nation and the world. Examples include the following:

- National Register of Historic Places
- National Historic Landmarks Program

- National Natural Landmarks Program
- Land and Water Conservation Fund Grants Program
- Historic American Buildings Survey
- Historic American Engineering Record
- Historic American Landscapes Survey
- American Battlefield Protection Program
- National Maritime Heritage Grants Program
- Rivers, Trails and Conservation Assistance Program
- Tribal Heritage Preservation Grants Program
- Preserve America Grants Program
- National Heritage Areas Program

Although these programs operate mainly outside the national parks, they form a vital part of the National Park Service mission. Information about the policies and procedures that govern these programs may be obtained from the appropriate NPS program managers (who are generally located in Washington, D.C.), or by visiting the NPS web site at [www.nps.gov](http://www.nps.gov).

### **U. S. Department of the Interior**

The Department of the Interior protects and manages the nation's natural resources and cultural heritage; provides scientific and other information about those resources; and honors its special responsibilities to American Indians, Alaska Natives, and affiliated Island Communities.

### **National Park Service**

The National Park Service preserves unimpaired the natural and cultural resources and values of the national park system for the enjoyment, education, and inspiration of this and future generations. The National Park Service cooperates with partners to extend the benefits of natural and cultural resource conservation and outdoor recreation throughout this country and the world.

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# Management Policies

## 2006

The national park system was created to conserve unimpaired many of the world's most magnificent landscapes, places that enshrine our nation's enduring principles, and places that remind us of the tremendous sacrifices Americans have made on behalf of those principles. They are the most remarkable collection of places in America for recreation and learning. Visitors can immerse themselves in places where events actually happened and enjoy some of the most significant natural and historic places in America. These are places that offer renewal for the body, the spirit and the mind. As required by the 1916 Organic Act, these special places must be managed in a special way—a way that allows them to be enjoyed not just by those who are here today, but also by generations that follow. Enjoyment by present and future generations can be assured only if these special places are passed on to them in an unimpaired condition. And that is the challenge that faces all the employees of the National Park Service. It is a challenge eagerly embraced, but employees must have the tools required to perform the job successfully. The *Management Policies* contained in these pages represent one of the most important tools available. Through their judicious and consistent application, these policies will set a firm foundation for stewardship that will continue to earn the trust and confidence of the American people.

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## Underlying Principles

The National Park Service adhered to a number of principles in preparing this 2006 edition of *Management Policies*. The key principles were that the policies must:

- comply with current laws, regulations and executive orders;
  - prevent impairment of park resources and values;
  - ensure that conservation will be predominant when there is a conflict between the protection of resources and their use;
  - maintain NPS responsibility for making decisions and for exercising key authorities;
  - emphasize consultation and cooperation with local/state/tribal/federal entities;
  - support pursuit of the best contemporary business practices and sustainability;
  - encourage consistency across the system —“one national park system”;
  - reflect NPS goals and a commitment to cooperative conservation and civic engagement;
  - employ a tone that leaves no room for misunderstanding the National Park Service’s commitment to the public’s appropriate use and enjoyment, including education and interpretation, of park resources, while preventing unacceptable impacts;
  - pass on to future generations natural, cultural, and physical resources that meet desired conditions better than they do today, along with improved opportunities for enjoyment.
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## MANAGEMENT POLICIES

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# Introduction

## Law, Policy, and Other Guidance

This volume is the basic policy document of the National Park Service (NPS) for managing the national park system. Adherence by NPS employees to policy is mandatory unless specifically waived or modified by the Secretary, the Assistant Secretary for Fish and Wildlife and Parks, or the Director.

In carrying out their responsibilities under the 1916 National Park Service<sup>[1]</sup> Organic Act and other pertinent statutes, all NPS officials and employees must be knowledgeable about the laws, regulations, and policies that pertain to their work. The property clause of the U.S. Constitution, which is the supreme law of the United States, gives Congress the authority to develop laws governing the management of the national park system. The property clause specifically directs that “The Congress will have the Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States” (article IV, section 3). Once laws are enacted, authority for interpreting and implementing them is delegated to appropriate levels of government. In carrying out this function, the National Park Service, like other federal agencies, develops policy to interpret the ambiguities of the law and to fill in the details left unaddressed by Congress in the statutes.

### **Hierarchy of Authorities**

The management of the national park system and NPS programs is guided by the Constitution, public laws, treaties, proclamations, executive orders, regulations, and directives of the Secretary of the Interior and the Assistant Secretary for Fish and Wildlife and Parks. NPS policy must be consistent with these higher authorities and with appropriate delegations of authority. Many of the public laws and other guidance affecting the various facets of NPS administration and management are cited for reference purposes throughout these *Management Policies*. Other laws, regulations, and policies related to the administration of federal programs, although not cited, may also apply. For example, many, but not all, of the legislative requirements of the Alaska National Interest Lands Conservation Act (ANILCA) are cited at different places throughout these *Management Policies*. The additional legislative requirements of ANILCA, although not cited, must also be considered in the interpretation and application of these policies, as must all other applicable legislative requirements. It is especially important that superintendents and other park staff review their park’s enabling legislation to determine whether it contains explicit guidance that would prevail over Service-wide policy.

### **Policy Development**

Policy sets the framework and provides direction for all management decisions. This direction may be general or specific; it may prescribe the process through which decisions are made, how an action is to be accomplished, or the results to be achieved. Policy initiatives may originate as a sudden, urgent response to an unanticipated problem or issue, or through a slow, evolutionary process as the Park Service gains increased experience or insight regarding a problem or issue. Sometimes the initiative does not originate within the Park Service, but rather with persons or organizations outside the Park Service who have a strong interest in how the Service manages the parks. However, NPS policy is usually developed through a concerted workgroup and consensus-building team effort involving extensive field review, consultation with NPS senior managers, and review and comment by affected parties and the general public.

All policy must be articulated in writing and must be approved by an NPS official who has been delegated authority to issue the policy. Policy must be published or otherwise made available to the public—particularly those whom it affects—and those who must implement it in the Washington office, regional offices, and parks. Unwritten or informal “policy,” and various understandings of NPS traditional practices, will not be recognized as official policy.

### **Compliance, Accountability, and Enforceability**

Service-wide policy is articulated by the Director of the National Park Service. NPS employees must follow these policies unless specifically waived or modified in writing by the Secretary, the Assistant Secretary, or the Director. Waivers and modifications will be considered on a case-by-case basis, and previous waivers or modifications will not necessarily be regarded as precedents for future waivers or modifications. A request for a waiver or modification of policy must include a written justification and



be submitted to the Director through the Office of Policy, which will coordinate with appropriate program offices.

The policies contained within this document are intended only to improve the internal management of the National Park Service; they are not intended to, and do not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person. Park superintendents will be held accountable for their and their staff's, adherence to Service-wide policy.

### **The Directives System**

This volume of NPS *Management Policies* is the basic Service-wide policy document of the National Park Service, superseding the 2001 edition. It is the highest of three levels of guidance documents in the NPS Directives System. The Directives System is designed to provide NPS management and staff with clear and continuously updated information on NPS policy and required and/or recommended actions, as well as any other information that will help them manage parks and programs effectively.

The *Management Policies* will be revised at appropriate intervals to consolidate Service-wide policy decisions, or to respond to new laws and technologies, new understandings of park resources and the factors that affect them, or changes in American society. Interim updates or amendments may be accomplished through director's orders (the second level of the Directives System), which also serve as a vehicle to clarify or supplement the *Management Policies* to meet the needs of NPS managers. Any previously dated statement of policy not consistent with these *Management Policies*, or with a director's order that updates, amends, or clarifies policy, is to be disregarded.

Under the Directives System, the most detailed and comprehensive guidance on implementing Service-wide policy is found in "level 3" documents, which are usually in the form of handbooks or reference manuals issued by associate directors. These documents provide NPS field employees with compilations of legal references, operating policies, standards, procedures, general information, recommendations, and examples to assist them in carrying out *Management Policies* and director's orders. Level 3 documents may not impose any new Service-wide requirements unless the Director has specifically authorized them to do so, but they may reiterate or compile requirements (for example, laws, regulations, and policies) that have been imposed by higher authorities.

This document is intended to be read in its entirety. While certain chapters or sections provide important guidance by themselves, that guidance must be supplemented by the overriding principles listed below, which provide insight into the reading of this document. In addition there is an interrelationship among the chapters that provides for clarity and continuity for the management of the national park system. Also, the glossary contains important terms that apply throughout the document and should be incorporated into the reading of the document.

Whenever *Management Policies* are revised in the future they should

- comply with current laws, regulations, and executive orders;
- prevent impairment of park resources and values;
- ensure that conservation will be predominant when there is a conflict between the protection of resources and their use;
- maintain NPS responsibility for making decisions and for exercising key authorities;
- emphasize consultation and cooperation with local/state/tribal/federal entities;
- support pursuit of the best contemporary business practices and sustainability;
- encourage consistency across the system —"one national park system";
- reflect NPS goals and a commitment to cooperative conservation and civic engagement;

- employ a tone that leaves no room for misunderstanding the Park Service's commitment to the public's appropriate use and enjoyment, including education and interpretation, of park resources, while preventing unacceptable impacts;
- pass on to future generations natural, cultural and physical resources that meet desired conditions better than they do today, along with improved opportunities for enjoyment.

### **Other Sources of Guidance**

Instructions, guidance, and directives of regional or otherwise-limited application supplementary to and in conformance with Service-wide policies may be issued by regional directors or associate directors within formal delegations of authority. Superintendents may issue, within formal delegations of authority, park-specific instructions, procedures, directives, and other supplementary guidance (such as hours of operation or dates for seasonal openings), provided that the guidance does not conflict with Service-wide policy.

### **NPS Program Policies**

This volume addresses only those policies applicable to management of the national park system. It does not address policies applicable to NPS-administered programs that serve the conservation and recreation needs of the nation, but are not directly related to the national park system. Examples include the National Register of Historic Places; the National Historic Landmarks Program; the National Natural Landmarks Program; the Land and Water Conservation Fund Grants Program; the Historic American Buildings Survey; the Historic American Engineering Record; the Historic American Landscapes Survey; the American Battlefield Protection Program; the National Maritime Heritage Grants Program; the Rivers, Trails and Conservation Assistance Program; the Tribal Heritage Preservation Grants Program; the Preserve America Grants Program; and the National Heritage Areas Program.

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<sup>[1]</sup> The terms "National Park Service," "Park Service," "Service," and "NPS" are used interchangeably in this document.

# 10 Commercial Visitor Services

Through the use of concession contracts or commercial use authorizations, the National Park Service will provide commercial visitor services that are necessary and appropriate for public use and enjoyment. Concession operations will be consistent to the highest practicable degree with the preservation and conservation of resources and values of the park unit. Concession operations will demonstrate sound environmental management and stewardship.

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## **10.1 General**

Commercial visitor services will be authorized through concession contracts or commercial use authorizations, unless otherwise provided by law. Section 10.2 below addresses concession authorizations; section 10.3 addresses commercial use authorizations.

*(See Leases 8.12. Also see Director's Orders #48A: Concession Management, and #48B: Commercial Use Authorizations)*

### **10.1.1 Leasing**

See Section 8.12.

## **10.2 Concessions**

### **10.2.1 Concession Policies**

Concession operations are subject to the provisions of the National Park Service Concessions Management Improvement Act of 1998; NPS regulations published at 36 CFR Part 51; this chapter of *NPS Management Policies*; Director's Order #48A: Concession Management; and other specific guidance that may be issued under the Director's authority. In Alaska, concession operations are also subject to the provisions of the Alaska National Interest Lands Conservation Act and 36 CFR Part 13.

### **10.2.2 Commercial Visitor Services Planning**

Commercial visitor services planning will identify the appropriate role of commercial operators in helping parks to provide opportunities for visitor use and enjoyment. This planning will be integrated into other plans and planning processes and will comply with all Service policies regarding planning and environmental analysis. The number, location, and sizes of facilities and sites assigned through concession authorizations will be the minimum necessary for proper and satisfactory operation of the facilities.

A park commercial services strategy must be in place to ensure that concession facilities and services are necessary and appropriate, financially viable, and addressed in an approved management plan. Commercial services plans may be developed to further implement a park's commercial services strategy and to guide decisions on whether to authorize or expand concessions. A decision to authorize or expand a park concession will consider the effect on, or need for, additional infrastructure and management of operations and be based on a determination that the facility or service

- is consistent with enabling legislation, and
- is complementary to a park's mission and visitor service objectives, and
- is necessary and appropriate for the public use and enjoyment of the park in which it is located, and
- is not, and cannot be, provided outside park boundaries, and

- incorporates sustainable principles and practices in planning, design, siting, construction, and maintenance, and
- adopts appropriate energy and water conservation, source reduction, and environmental purchasing standards and goals, and
- will not cause unacceptable impacts.

Prior to initiating new services authorized under a concession contract, a market and financial viability study/analysis will be completed to ensure the overall contract is feasible.

For information about leasing structures for appropriate uses, see section 8.12 and Director's Order #38: Real Property Leasing.

*(See Unacceptable Impact 1.4.7.1)*

### **10.2.3 Concession Contracting**

Approved standard contract language will be used in all NPS concession contracts. Any deviations from such language must be approved in writing by the Director.

#### **10.2.3.1 Terms and Conditions of Contracts**

Concession services will be authorized under concession contracts unless otherwise authorized by law. The term of a concession contract will generally be 10 years or less. However, the Director may award a contract for a term of up to 20 years if the Director determines that the contract terms and conditions, including the required construction of capital improvements, warrant a longer term. In this regard, the term of concession contracts should be as short as is prudent, taking into account the financial requirements of the concession contract, the required construction of capital improvements, resource preservation and conservation, visitor needs, and other factors that the Director may deem appropriate. Proposed concession operations must be economically feasible and supported by a feasibility study prepared by a qualified individual.

#### **10.2.3.2 Modifications/Amendments**

Concession contracts may be modified only by written amendment. Amendments developed after the issuance of a concession contract must be consistent with current NPS policies and orders. Unless otherwise authorized by the contract, a concession contract may be amended to provide minor additional visitor services that are a reasonable extension of the existing services.

#### **10.2.3.3 Extension**

Concession contracts may be extended only in accordance with the requirements of 36 CFR Part 51, subpart D. The signature authority for contract extensions or amendments must be consistent with delegations of authority from the Director.

#### **10.2.3.4 Competition**

To obtain the best service provider and maximize benefits to the government, the National Park Service encourages competition in the awarding of concession contracts. Through outreach, the National Park Service also encourages the participation of American Indian, minority, and women-owned businesses when new business activities occur.

#### **10.2.3.5 Third-party Agreements and Subconcessions**

Unless specified in the contract, sub-concession or other third-party agreements (including management agreements) for the provision of visitor services that are required and/or authorized under concession contracts are not permitted. The Park Service may also advertise for a new concession contract to provide these additional services.

#### **10.2.3.6 Multipark Contracts**

Concessioners operating in more than one park unit must have separate contracts for each park unit. When approved by the Director, an exception may be made in the case of those park units having common NPS management or where service is provided in contiguous park areas (for example, a pack trip that crosses the boundary of two adjoining parks, or where lack of opportunity for profit, geographic location, and type of service is not feasible within a single location).

#### **10.2.3.7 Termination**

The Service may terminate concession contracts for default and under any other circumstances specified in the concession contract.

### **10.2.4 Concession Operations**

#### **10.2.4.1 Operating Plans**

The operating plan is an exhibit to the concession contract; the plan will describe operational responsibilities authorized in the contract between the concessioner and the Park Service. The plan is reviewed and updated annually by the Service in accordance with the terms of the contract. Operating plans are considered an integral part of a concessioner's contractual performance compliance. Some aspects of a concessioner's operating requirements may also be contained in general or specific provisions unique to that contract.

#### **10.2.4.2 Service Type and Quality**

It is the objective of the National Park Service that park visitors be provided with high-quality facilities and services. Where appropriate, the concession contract will specify a range of facility, accommodation, and service types that are to be provided at reasonable rates and standards to ensure optimal facility maintenance and quality services to visitors. Concessioners are not permitted to use or encourage pseudo-ownership concepts such as time shares or long-term rental agreements.

#### **10.2.4.3 Evaluation of Concession Operations**

Concession operations will be regularly evaluated to ensure that park visitors are provided with high-quality services and facilities that are safe and sanitary and meet NPS environmental, health, safety, and operational standards. As outlined in the concessioner operational evaluation program, the evaluation results will provide a basis for NPS management to determine (1) whether to continue or terminate a concession contract, and (2) whether a concessioner is eligible to exercise a right of preference in the award of a qualified new concession contract for those categories of contracts where such a right is available by law.

#### **10.2.4.4 Interpretation by Concessioners**

Concessioners will be required to appropriately train their employees and, through their facilities and services, to instill in their guests an appreciation of the park, its purpose and significance, its proper and sustainable management, and the stewardship of its resources. When the provision of interpretive services is required by the contract, concessioners will provide formal interpretive training, approved by the Park Service, for their employees, or will participate in formal interpretive training that is either offered by the Park Service or cosponsored by the concessioner.

Visitor appreciation of the park can be instilled in many ways. For example, it can be accomplished through guided activities; the design, architecture, landscape, and decor of facilities; educational programs; interpretive menu design and menu offerings; and involvement in the park's overall interpretive program. Gift shop merchandise and displays also present opportunities to educate visitors about park history; natural, cultural, and historical resources; and sustainable environmental management.

Concession contracts will require the concessioner to provide all visitor services in a manner that is consistent with and supportive of the interpretive themes, goals, and objectives articulated in each park's planning documents, mission statement, and/or interpretive prospectus.

*(See Interpretive Competencies and Skills 7.4)*

#### **10.2.4.5 Merchandise**

The National Park Service will approve the nature, type, and quality of merchandise to be offered by concessioners. Although there is no Service-wide list of specific preferred merchandise, priority will be given to sale items that foster awareness, understanding, and appreciation of the park and its resources and that interprets those resources. Merchandise should have interpretive labeling or include other information to indicate how the merchandise is relevant to the park and its interpretive program and themes.

Each concession operation with a gift shop will have a mission statement based on the park's concession service plan or general management plan. Concessioners will develop and implement a merchandise plan based on the park's gift shop mission statement. The merchandise plan must be satisfactory to the Director, and should ensure that merchandise sold or provided reflects the significance of the park and promotes the conservation of the park's geological resources, wildlife, plant life, archeological resources, local Native American culture, local ethnic and traditional culture, historical significance, and other park resources and values. The plan should also integrate pollution prevention and waste-reduction objectives and strategies for merchandise and packaging.

Merchandise must be available at a range of prices. Theme-related merchandise manufactured or handcrafted in the United States—particularly in a park's geographic vicinity—will be encouraged. The revenue derived from the sale of United States Indian, Alaska Native, native Samoan, and Native Hawaiian handicrafts is exempt from any franchise fee payments.

#### **10.2.4.6 Artifacts and Specimens**

Concessioners will not be permitted to sell any merchandise in violation of laws, regulations, or NPS policies. The park superintendent may prohibit the sale of some items for retail sale because the merchandise is locally sensitive or inappropriate for sale. The sale of original objects, artifacts, or specimens of a historic, archeological, paleontological, or biological nature is prohibited. Replicated historic, archeological, paleontological, or biological objects, artifacts, or specimens may be sold if they are obvious replicas and clearly labeled.

Any geological merchandise approved for sale or exhibit by concessioners must be accompanied by appropriate educational material and a written disclaimer clearly stating that such items were not obtained from inside park boundaries. The proposed sale of any replicas, or of geological merchandise, must be addressed in the gift shop merchandise plan.

#### **10.2.4.7 Rates**

The National Park Service must approve all rates charged to visitors by concessioners. The reasonableness of a concessioner's rates and charges to the public will, unless otherwise provided in the contract, be judged primarily on the basis of comparison with current rates and charges for facilities and services of comparable character under similar conditions. Due consideration will be given to length of season, provision for peak loads, average percentage of occupancy, accessibility, availability and costs of labor and materials, type of patronage, and other factors deemed significant by the NPS Director.

#### **10.2.4.8 Risk Management Program**

Concession contracts require each concessioner to develop a risk management program that is (1) appropriate in scope to the size and nature of the operation, (2) in accord with the Occupational Safety and Health Act of 1970 and the NPS concession risk management program, and (3) approved by the superintendent. Concessioners are responsible for managing all of their operations to minimize risk and control loss due to accident, illness, or injury. To ensure compliance, the Service will include a risk management evaluation as part of its standard operational review of concession operations.

#### **10.2.4.9 Natural and Cultural Resource Management Requirements**

Concessioners are required to comply with applicable provisions of all laws, regulations, and policies that apply to natural and cultural resource protection. The use, maintenance, repair, rehabilitation, restoration, or other modification of concession facilities that are listed in or eligible for the National Register of Historic Places are subject to the applicable provisions of all laws, executive orders, regulations, and policies pertaining to cultural properties. The National Park Service will assist concessioners in understanding and complying with regulations for the protection of historic properties (36 CFR Part 800) promulgated by the Advisory Council on Historic Preservation. Historic structures and their contents and museum objects that are in the control of concessioners will be treated in accordance with the appropriate standards contained in NPS guidance documents. The Service will work closely with concessioners to integrate into concession activities the policies, procedures, and practices of Executive Order 13287 (Preserve America).

*(See Chapter 4: Natural Resource Management; Use of Historic Structures 5.3.5.4.7. Also see Reference Manual 24: the Museum Handbook; Director's Order #28: Cultural Resource Management; #38: Real Property Leasing, and #48A: Concession Management)*

#### **10.2.4.10 Environmental Program Requirements**

In the operation of visitor services, concessioners will be required by contract to meet environmental compliance objectives by

- complying with all applicable laws pertaining to the protection of human health and the environment; and
- incorporating best management practices in all operations, construction, maintenance, acquisition, provision of visitor services, and other activities under the contract.

Concessioners will also be required by contract to develop, document, implement, and comply fully with—to the satisfaction of the Director—a comprehensive, written environmental management program (EMP) to achieve environmental management objectives. The EMP

- should be appropriate to the nature and size of the operation;
- must account for all activities with potential environmental impacts conducted by the concessioner, or to which the concessioner contributes;
- must be updated at least annually; and
- must be approved by the superintendent.

The scope and complexity of the EMP may vary based on the type, size, and number of concessioner activities. Exceptions to the requirement for an EMP must be approved by the Director.

The National Park Service will review concessioner compliance with the EMP under the contract. The Park Service will also

- assist concessioners in understanding environmental program requirements;

- conduct environmental compliance audits of all commercial visitor services at least every three years in accordance with the concessions environmental audit program (the concessioner will be responsible for corrective actions required by law and identified during the environmental compliance audits); and
- include an environmental management evaluation as part of its annual standard operational reviews of concession operations.

*(See Compensation for Injuries to Natural Resources 4.1.6; Integrated Pest Management Program 4.4.5.2; Compensation for Injuries to Cultural Resources 5.3.1.3; Overnight Accommodations and Food Services 9.3.2. Also see Director's Order #48A: Concession Management; Director's Order #83: Public Health)*

#### **10.2.4.11 Insurance**

Concession contracts will identify the types and minimum amounts of insurance coverage required of concessioners to

- provide reasonable assurance that concessioners have the ability to cover bona fide claims for bodily injury, death, or property damage arising from an action or omission of the operator;
- protect the government against potential liability for claims based on the negligence of the operators; and
- enable rapid repair or replacement of essential visitor facilities located on park lands that are damaged or destroyed by fire or other hazards.

Concessioners will not be permitted to operate without liability insurance. Under limited conditions, concessioners may operate without property insurance, as described in Director's Order #48A: Concession Management.

#### **10.2.4.12 Food Service Sanitation Inspections**

Concessioners who prepare food on or off park lands or serve food on park lands will be subject to inspection for compliance with all applicable health and sanitation requirements of local and state agencies, the U.S. Public Health Service, and the Food and Drug Administration.

*(Also see Director's Order #83: Public Health)*

#### **10.2.4.13 Smoking**

Generally, all NPS concession facilities will be smoke free. The only exceptions—which the Service does not encourage—will be specifically designated smoking areas and rooms if allowed by state and local law. The sale of tobacco products through vending machines is prohibited.

*(Also see Director's Order #50D: Smoking Policy; Executive Order 13058 (Protecting Federal Employees and the Public from Exposure to Tobacco Smoke in the Federal Workplace))*

#### **10.2.4.14 Wireless Local Area Networks**

Concessioners may be authorized to provide wireless local area network access for park visitors and for administrative and employee use within concessioner assigned facilities. If this type of service is found to be necessary and appropriate and otherwise in accord with the park's planning and other guidance documents, the concession authorization's operating plan must identify the need for the service and the standards for offering the service. A request to construct telecommunications equipment and infrastructure outside the concessioner's assigned facilities must be processed in accordance with section 8.6.4.3.



### **10.2.5 Concessions Financial Management**

Concession contracts must provide for payment to the government of a franchise fee, or other monetary consideration as determined by the Secretary, upon consideration of the probable value to the concessioner of the privileges granted by the particular contract involved. Such probable value will be based upon a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract. Consideration of revenue to the United States is subordinate to the objectives of protecting and preserving park areas and providing necessary and appropriate services for visitors at reasonable rates.

#### **10.2.5.1 Franchise Fees**

The amount of the franchise fee or other monetary consideration paid to the United States for the term of the concession contract must be specified in the concession contract and may only be modified to reflect extraordinary unanticipated changes from the conditions expected as of the effective date of the contract. Contracts with a term of more than five years will include a provision that allows reconsideration of the franchise fee at the request of the Director or the concessioner in the event of such extraordinary unanticipated changes. Such provision will provide for binding arbitration in the event that the Director and the concessioner are unable to agree upon an adjustment to the franchise fee in these circumstances.

#### **10.2.5.2 Franchise Fee Special Account**

All franchise fees and other monetary considerations will be deposited into a Department of the Treasury special account. In accordance with the NPS Concessions Management Improvement Act of 1998, twenty percent (20%) will be available to support activities throughout the national park system, and eighty percent (80%) will be available to the park unit in which it was generated for visitor services and funding high-priority and urgently necessary resource management programs and operations.

#### **10.2.5.3 Record-keeping System**

All concessioners will establish and maintain a system of accounts and a record-keeping system that use written journals and general ledger accounts to facilitate the preparation of annual concessioner financial reports.

#### **10.2.5.4 Annual Financial Reports**

For each concession contract, concessioners will be required to submit a separate annual financial report that reflects only the operations they are authorized to provide under that particular contract.

#### **10.2.5.5 Donations to the National Park Service**

The National Park Service will not solicit or accept direct donations or gifts from entities that have or are seeking to obtain a concessions contract. The Park Service will not require any concessioner to donate or make contributions to the Service under any circumstance, including the incorporation of such a requirement in concession contracts. Further guidance on donations is available in Director's Order #21: Donations and Fundraising.

### **10.2.6 Concession Facilities**

All buildings under a concession contract are U.S. government/Service-owned structures and are part of the overall facility inventory at each park. Depending on the contract, the concessioner may have a contractual right of compensation in the form of a leasehold surrender interest or possessory interest in one, some, or all of the buildings. Responsibilities for maintenance, environmental management, and other operational issues must be included in each concession contract. Park facility managers will work closely with the park's concession program managers to ensure that these government buildings are part of the overall park inventory and tracking systems. Park managers will ensure that possessory interests and leasehold surrender interest valuations conform to the terms and conditions of the concession

contract.

#### **10.2.6.1 Design**

Concession facilities will be of a size and at a location that the Service determines to be necessary and appropriate for their intended purposes. All concession facilities must comply with applicable federal, state, and local construction codes, and meet accessibility requirements as set forth in applicable accessibility guidelines. Proposed concession facilities must conform to NPS standards for sustainable design, universal design, and architectural design. Concession development or improvement proposals must undergo review for compliance with the National Environmental Policy Act of 1969 and section 106 of the National Historic Preservation Act (16 USC 470f), and proposals must be carried out in a manner consistent with applicable provisions of the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* and other applicable legal requirements.

In addition to general park design requirements, the Park Service will apply value analysis during the design process to analyze the functions of facilities, processes, systems, equipment, services, and supplies. Value analysis must be used to help achieve essential functions at the lowest life-cycle cost, consistent with required performance, reliability, environmental quality, and safety criteria and standards.

*(See Facility Planning and Design 9.1.1)*

#### **10.2.6.2 Accessibility of Commercial Services**

Concessioners share the National Park Service's responsibility to provide employees and visitors with the greatest degree of access to programs, facilities, and services that is reasonable, within the terms of existing contracts and agreements. Applicable laws include, but are not limited to (1) regulations issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended (43 CFR Part 17), which prohibits discrimination on the basis of disability in programs or activities conducted by federal executive agencies; and (2) the Architectural Barriers Act of 1968, which requires physical access to buildings and facilities. Where there is no specific language identifying applicable accessibility laws in an existing concession contract, the Park Service will address the issue of compliance in the annual concession operating plan.

*(See Physical Access for Persons with Disabilities 5.3.2; Accessibility for Persons with Disabilities 1.9.3, 8.2.4 and 9.1.2. Also see Director's Order #42: Accessibility for Visitors with Disabilities in National Park Service Programs and Services)*

#### **10.2.6.3 Maintenance**

Concession contracts will require concessioners to be responsible for all maintenance and repair of facilities, lands, and utility systems assigned for their use, in accordance with standards acceptable to the Service. Exceptions will be made only in extraordinary circumstances, as determined by the Director. All concession contracts must include a current maintenance plan as specified in the concession contract. Maintenance plans are an exhibit to the concession contract and will be considered an integral part of a concessioner's contractual performance compliance.

Maintenance of historic properties and cultural landscapes will be carried out in a manner consistent with applicable provisions of the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*.

#### **10.2.6.4 Utilities and Services**

Utilities include, but are not limited to, electricity, fuel, natural gas, water, disposal of wastewater and solid waste, and communication systems. When available, the Service may provide utilities to the

concessioner for use in connection with the operations required or authorized under the contract at rates to be determined in accordance with applicable laws. If the Service does not provide utilities to the concessioner, the concessioner will, with the written approval of the Director and under any requirements prescribed by the Director, (1) secure necessary utilities at its own expense from sources outside the area; or (2) install the utilities within the area, subject to conditions of the contract.

*(Also see Director's Order #35B: Sale of National Park Service-produced Utilities)*

#### **10.2.6.5 Closure of Commercial Operations during Government Shutdown**

The Anti-Deficiency Act requires federal agencies to suspend all nonessential activities whenever there is a failure to enact an appropriations bill or adopt a continuing resolution. All concessioner-operated programs and services must cease, and visitors must be asked to leave within 48 hours. All commercial facilities and services in a park will be closed to protect the safety of visitors and the integrity of park resources. Exceptions to this policy include concessions that are required for health and safety purposes or protection of the environment, or that are necessary to support park operations that are deemed essential, such as law enforcement.

Commercial facilities located on through-roads (roads or public highways that begin and end outside of a park, plus parkways) and public highways may remain open if doing so does not result in additional costs to the park (for example, the staffing of entrance stations). These commercial facilities may include operations such as service stations, food services, stores, and lodging, or portions of such operations. The commercial facility in question should have access directly from the road or highway and not require the reopening of park roads having other destinations. More specific aspects of closures may be guided by a Service-wide shutdown plan.

### **10.2.7 Concessioner Employees and Employment Conditions**

#### **10.2.7.1 Nondiscrimination**

Concessioners will comply with all applicable laws and regulations relating to nondiscrimination in employment and the provision of services to the public. As the National Park Service strives to achieve workforce diversity, so too will concessioners be encouraged to recognize workforce diversity as a sound business practice.

#### **10.2.7.2 Substance Abuse**

In compliance with state and federal regulations condemning substance abuse, the Park Service prohibits the unlawful possession, use, or distribution of illicit drugs and alcohol. The Service also prohibits the unlawful manufacture, cultivation, processing, or transportation of illicit drugs. This policy applies to concessioners and their employees, at any facility or in any activity taking place on NPS lands. Concessioners are required to provide and advise employees about the availability of employee assistance programs addressing substance abuse problems.

### **10.2.8 NPS Employees**

#### **10.2.8.1 Accepting Gifts and Reduced Rates from Concessioners**

NPS employees may not receive concessioner goods or services at a discount unless it is in connection with official business, is to the government's advantage, and is provided for under the terms of a concession contract. However, employees may accept reduced rates or discounts offered by the concessioner when those same reduced rates or discounts are available to the general public.

NPS employees may not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a concessioner or other person who conducts operations and activities that are regulated by the Department of the Interior. Employees should consult with their ethics counselor regarding the limited exceptions to the general prohibition on accepting gifts from

outside sources.

#### **10.2.8.2 Employment of NPS Personnel or Family Members by Concessioners**

Federal law prohibits government employees from making recommendations, decisions, or approvals relating to applications, contracts, controversies, or other matters in which the employee or the employee's spouse or minor child has a financial interest. Park employees may not make decisions, approvals, or recommendations related to concession activities when their spouse or dependent child is employed by a park concessioner in that particular park. For example, the spouse or dependent child of the superintendent, assistant superintendent, concession staff, environmental manager, or public health specialist may not be employed by a concessioner in the specific park in which the NPS employee works.

*(Also see Director's Order #37: Home Businesses in Park Housing)*

#### **10.2.8.3 NPS Employee Ownership or Investment in Concession Businesses**

Department of the Interior policy prohibits employees and their spouses and minor children from acquiring or retaining for commercial purposes any permit, lease, or other rights granted by the Department for conducting commercial services on federal lands. Therefore, no NPS concession contract or commercial use authorization to conduct commercial services in a park will be issued to NPS employees or their spouses and minor children who are owners, partners, corporate officers, or general managers of any business seeking such a contract in federal land managed by the Department of the Interior. Further, to avoid the appearance of partiality and conflicts of interest, and to comply with ethics laws that apply to all federal employees, NPS employees may not work on any matter involving a business in which they, their spouse, or their minor children have a financial interest.

#### **10.2.8.4 Concession Management Personnel Qualifications**

To effectively carry out the concession management program, managers and supervisors will make every effort to ensure that personnel selected for positions meet the essential competencies established for the position being filled. When concession management personnel lack the full complement of essential competencies or require refresher training for their position, managers and supervisors will ensure that those employees are trained and certified as competent. All personnel vacancy announcements issued for concession management must include program competencies.

### **10.3 Commercial Use Authorizations**

Commercial use authorizations (CUAs), which are not considered as concession contracts, may be issued pursuant to section 418 of the National Park Service Concessions Management Improvement Act of 1998 (16 USC 5966). A commercial use authorization is a permit that authorizes suitable commercial services to park area visitors in limited circumstances as described in 10.3.1. A concession contract may be issued instead of the commercial use authorization when the Director determines that the services are necessary and appropriate, and/or provision of the services require certain protections such as legal, financial, and resource provisions that are more typical of a concession contract. A more detailed discussion of commercial use authorizations is included in Director's Order #48B: Commercial Use Authorizations.

#### **10.3.1 General**

Commercial use authorizations may be issued only to authorize services that (1) are determined to be an appropriate use of the park; (2) will have minimal impact on park resources and values; and (3) are consistent with the purpose for which the unit was established, as well as all applicable management plans and park policies and regulations.

### **10.3.2 Requirements**

By law, a commercial use authorization must provide for

- payment of a reasonable fee, such fees to be used, at a minimum, to recover associated management and administrative costs;
- provision of services in a manner consistent to the highest practicable degree with the preservation and conservation of park resources and values; and
- limitation of liability of the federal government arising from the commercial use authorization.

No park may issue commercial use authorizations in a quantity inconsistent with the preservation and proper management of park resources and values. Each park issuing commercial use authorizations will ensure that it contains provisions for the protection of visitors and the resources and values of the park.

### **10.3.3 Limitations**

By law, commercial use authorizations may be issued only for

- commercial operations with annual gross receipts of not more than \$25,000 resulting from services originating and provided solely within a unit of the national park system pursuant to such authorization;
- the incidental use of resources of the unit by commercial operations that provide services originating and terminating outside of the boundaries of the park unit; or
- such uses by organized children's camps, outdoor clubs, nonprofit institutions (including backcountry use), and such other uses as the Secretary of the Interior deems appropriate.

Nonprofit institutions will be required to obtain commercial use authorizations only when they generate taxable income from the authorized use.

### **10.3.4 Construction Prohibition**

By law, under no circumstances will a commercial use authorization provide for or allow construction of any structure, fixture, or improvement on federally owned land within any unit of the national park system.

### **10.3.5 Duration**

By law, the maximum term for any commercial use authorization is two years in length. No rights of renewal are associated with commercial use authorizations.

### **10.3.6 Other Contracts**

Holding or seeking to obtain a commercial use authorization does not preclude a person, corporation, or other entity from submitting proposals for concessions contracts.